IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC. d/b/a WRS MOTION PICTURE LABORATORIES, a corporation,	)	
Plaintiff,	)	
vs.	)	C.A. No. 2:00-2041
	)	Judge Arthur J. Schwab
PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual,	)	
Defendants	)	

RESPONSE TO AFFIDAVIT OF ERIC PARKINSON

1. Admitted.

2. Admitted in part. Denied in part. WRS admits the statements contained in Paragraph 2 with the exception that WRS disputes the accuracy of Parkinson's personal knowledge, which is denied.

3. Admitted.

4. Denied. After reasonable investigation, WRS is unable to form a belief as to the truth of this statement, in particular whether the statements of Mr. Gibson are accurate and constitute dereliction. This statement is, therefore, denied.

5. Admitted in part. Denied in part. WRS admits the entry of Judgment against Parkinson and the amount. WRS specifically denies the remainder of the allegations are specifically denied. Although Parkinson was the president of Plaza, the confused nature of Plaza's records as admitted by Parkinson in documents attached

hereto demonstrate that he lacked sufficient knowledge to form an accurate belief as to the debt owed by Plaza to WRS. Said statement is, therefore, denied.

6. Denied to the extent a response is required. WRS specifically denies that the Affidavit spells out any facts that establish a meritorious defense.

7. Denied. WRS specifically denies that the statements contained in the Parkinson Affidavit establish any breach by WRS and that the WRS records and the Judgment entered based on those records are inaccurate or that von Bernuth, Plaza, as well as others, have a meritorious defense.

8. Admitted in part. Denied in part. WRS specifically denies that it has not accounted for or given credit to Plaza for the funds collected from the Plaza receivables. WRS did not have control of the receivables as alleged. The receivables were controlled by the customers who allegedly owed the receivables. The true amount of the receivables was subject to the credits given to the customers by Parkinson and subject to the right of the customers to return unused items. WRS nevertheless collected receivables and submitted to Plaza its share due under the Services Agreement. WRS admits that the inventory of videocassettes that it stored was not liquidated. WRS, as acknowledged by Parkinson in Exhibit “1” to this Response, could not exploit the inventory without infringing the rights of the holders that had retained Plaza to distribute their films. The purpose of WRS’ request for declaratory relief was to establish WRS’ right to exploit the inventory and to foreclose on the inventory. WRS abandoned these requests for relief when the case was reopened.

9. Denied. WRS denies the statement in Paragraph 9 because, based upon Parkinson’s statements contained in the Exhibits identified below, he acknowledged

periodically that Plaza was in debt to WRS and that he had no reasonable method to accurately determine the amount of the debt. In particular, WRS attaches hereto the following:

Exhibit "1"	Memorandum 4/20/00 Parkinson to Plaza "work out plan" acknowledging difficulty in liquidating inventory, and AR to pay WRS debt
Exhibit "2"	Memorandum 11/2/99 Parkinson to WRS concerning Plaza's "screwed up AR"
Exhibit "3"	Memorandum 11/2/99 Parkinson to WRS regarding Joe Shields reconciling Plaza's accounts receivable
Exhibit "4"	Memorandum 1/14/00 Parkinson to WRS regarding large and severely past due balances authorizing WRS to retain 100% of certain account receivable payments
Exhibit "5"	Memorandum October 15, 2000 Parkinson to Napor promising 100% of income from a specific receivable to apply to Plaza debt.

10. Admitted in part. Denied in part. WRS admits that Parkinson formed Plaza as alleged. WRS is unable to form a belief as to the remaining averments. WRS admits that Herklotz was CEO of Plaza since that was a fact alleged by Herklotz.

11. Admitted in part. Denied in part. WRS admits the averment that one of Herklotz's incentives was to distribute Giant of Thunder Mountain. WRS denies the remainder of this statement. On the contrary, WRS refers to the minutes of the March 28, 1998 meeting attached as Exhibit "7", and referred to in Herklotz' Affidavit (Doc. No.128, attachment #26).

12. Admitted in part. Denied in part. WRS denies that the terms contained in Exhibit "A" were embodied in an Agreement signed by Plaza. However, WRS provided the requested services.

13. Denied. WRS denies this statement. The terms of the discount are contained in the Services Agreement and were contingent upon Plaza being current in its payments to WRS. (Doc. No. 93 attachment #1 D).

14. Admitted in part. Denied in part. WRS believes based upon Herklotz's averments that the statement is for the most part accurate.

15. Admitted in part. Denied in part. WRS admits that Plaza ordered approximately 200,000 videocassettes of Giant of Thunder Mountain. Plaza also ordered a similar quantity from Central de Video in Mexico, which failed to perform as Plaza expected. The consequence of their failure was described by Parkinson in Exhibit "8", wherein Parkinson commended WRS for its services in providing the order.

16. Admitted. By way of further Answer, Exhibit "9" also describes the consequences to the Plaza receivables, when product sold did not sell to consumers and Plaza's difficulty in accurately calculating its customers' debt.

17. Admitted that the Plaza receivable of March 31, 1998 of $140, 246.16 increased to $685,345.98 exclusive of earned finance charges as of August 31, 1998, primarily as the result of The Giant of Thunder Mountain.

18. Admitted in part. Denied in part. WRS admits that the anticipated sales to consumers of Giant of Thunder Mountain did not materialize. Because Herklotz has claimed that Parkinson misled him, WRS is unable determine the accuracy of the remainder of this statement. WRS admits that Plaza claimed to have sold other titles in its library, but those gross sales were also subject to various credits and returns.

19. Admitted in part. Denied in part. WRS admits that Plaza could not accurately maintain its own records as Parkinson acknowledged in Exhibit "8", which

states, “Plaza has gone through four accountants and three separate computer programs in attempts to create accurate accounting reports which are consistent with those statements of Plaza’s customers,” and Plaza’s cash flow problem. However, Plaza was overdue in its payments to WRS in May 1998, as shown by Exhibit “9”.

20. Admitted in part. Denied in part. WRS denies the implication that the arrears were caused by the problem with Giant of Thunder Mountain. Plaza was in arrears prior to the Giant of Thunder Mountain project.

21. Admitted. By way of further Response, Parkinson proposed the Service Agreement in light of Plaza’s difficulties as acknowledged in Exhibit “10”.

22. Admitted in part. Denied in part. The Services Agreement contemplated establishing a lock box. In November 1999, WRS began the process of setting up the lock box with National Bank of Canada. However, Parkinson put a hold on the opening of the lockbox and had payments made to Plaza’s Bank of America account. In March 1999, Parkinson authorized the opening of the lock box at NBOC in Los Angeles. NBOC used Mellon Financial Services to provide the lock box identified as number 22011. This is evidenced by the following:

Exhibit “11”	Agreement of November 16, 1998 between National Bank of Canada (hereinafter “NBOC”) Plaza and WRS.
Exhibit “12”	Parkinson’s letter of November 15, 1998 suggesting that use of NBOC lock box be delayed.
Exhibit “13”	Parkinson Memo of March 10referring to simplified lock box letter from Parkinson March 9, 1999
Exhibit “14”	Authorization letter of Letter of March 9, 1999 authorizing lock box
Exhibit “15”	March 30, 1999 letter to NBOC from WRS to open Lock box

Exhibit "16" April 8, 1999 letter from NBOC identifying the lock box information as:

WRS for Plaza entertainment
Dept La 22011
Pasadena CA 91185-2011

With a street address of:

WRS for Plaza entertainment
Mellon financial Services
Dept 22011
1240 South Myrtle Avenue
Monrovia CA 91016

Exhibit "16" Example of lock box deposit identifying WRS, Plaza, NBOC and Mellon financial and lock box number 22011.

23. Admitted in part. Denied in part. Authorization was already required as set forth in the Agreement.

24. The Services Agreement speak for itself.

25. Denied. Notwithstanding the letter, the invoicing was accomplished and Plaza continued to order product from WRS.

26. Denied. WRS provided the service as described in the Services Agreement. The collectability of the receivables was not a function of WRS' performance, but the accuracy of Plaza's records and credits to which the customers believed they were entitled.

27. Denied. WRS accounted for the payments it received in the only lock box that was established, which was lock box number 22011 owned by the NBOC and located at Mellon Financial Services, Los Angeles, CA. Parkinson did not advise his customers to direct payment through the lock box until June 24, 1998. See Parkinson Exhibit "E". WRS provided records of the lock box to Schneider Downs, who confirmed

the reasonable accuracy of the WRS records. Also the Memoranda from Parkinson attached to this Affidavit demonstrates Parkinson's knowledge that payments were received and distributed.

28. Admitted in part. Denied in part. WRS admits that its records do not show receipt of the payments identified by Parkinson's Exhibit "D". However, notwithstanding the Services Agreement, Plaza continued to solicit and deposit receivable payments to its operating account rather than the lock box so that the lock box records and WRS' records would not show the payment unless discovered by WRS while attempting to collect a receivable that showed as due but which the customer had paid. For example:

Exhibit "17" August 6, 1999 Memoranda Parkinson sent to WRS concerning disbursement of its share of lock box deposits.

Exhibit "18" Copy of Video Productions Check 10/16/99 deposited into Plaza Bank of America Account

Exhibit "19" Library Video Check 10/11/99 deposited into Plaza Bank of America Account.

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Exhibit "20" Copy of Letter From Parkinson directing payments to be made to Plaza account

29. Denied. No lock box existed until set up through NBOC at Mellon Financial Services as set forth in the Exhibits attached hereto.

30. Denied. The documents to the contrary that the NBOC lock box Agreement was signed in November 1998, but authorization to open the account was not provided until March 1999. Parkinson did not notify his customers of the lock box until June 24, 1998. (Parkinson's Exhibit "E")

31. Denied. There has only been one lock box number 22011 set up by National Bank of Canada at Mellon Financial Services as shown in the attached Exhibit "16".

32. Denied. The lock box number 22011 was the only lock box used pursuant to the terms of the Agreement and Services Agreement.

33. Admitted in part. Denied in part. WRS denies the statement that implies that WRS took control over Plaza's receivables. Joe Shields and Melanie Verlin went to Plaza in an effort to reconcile Plaza records to facilitate performance under the Services Agreement as acknowledged by Parkinson in Exhibit "3". Parkinson unilaterally turned over the records to WRS and in December 1999 and notified customers that WRS was providing the administrative services that were originally contemplated in October of 1998 by the services agreed. See Exhibit "21", notice to Plaza December 15, 1999.

34. Denied. WRS specifically denies that it seized any record or implemented a new lock box. Rather, WRS performed as agreed under the Services Agreement. Due to Parkinson's delay in implementing the lock box and the disarray in Plaza's records, WRS made efforts to reconcile the WRS accounts as acknowledged by Parkinson. In the fall of 1999, Parkinson as entering into a new arrangement with an entity known as Entertech, sought to have WRS take over the services described in Exhibit "21". His actions were voluntary and not a "seizure" by WRS as characterized. See Parkinson's efforts with Entertech Exhibit "22" .

35. Denied. While Plaza claimed to have the quantity of receivables identified in paragraph 35, those receivables were subject to significant dispute by Plaza customers.

36. Denied. WRS denies the averment. To the contrary, Parkinson's Memoranda confirms his contradicting knowledge. Further, only one lock box was set up at WRS as reviewed by Schneider Downs demonstrated application of the collected receivables to the Plaza debt.

37. Denied. WRS records accurately reflect the invoicing to Plaza and the payments received. WRS did experience difficulty in reconciling Plaza's records and incorporating Plaza's records into the WRS systems, but any difficulty experienced did not affect the amounts owed by Plaza. Despite the alleged concern, Plaza continued to order product from WRS. See purchase order of November 2, 1999. Exhibit "23."

38. Denied. the contents of this statement are denied by WRS. In particular, the statements in the attached Memorandum and the WRS records as reviewed by Schneider Downs demonstrate Parkinson acknowledged the funds received and distributed for the lock box account no. 22011.

39. Denied. WRS records do not contain the alleged letter. However, on February 2, 2000, Parkinson wrote concerning the lock box collections and his anticipated distribution without complaining. See Exhibit "24."

40. Denied. The records of WRS demonstrates that payments were received in lock box account no. 22011 and distributed and this letter is not in WRS files.

41. Denied. WRS denies the existence of a "first" and "second" Lock Box Agreement. Rather, NBOC opened the lock box through Mellon Financial Services as evidenced by Exhibit "16" attached hereto. WRS records as reviewed by Schneider Downs included payments made from the lock box to the Plaza debt.

42. Denied. WRS records, as reviewed by Schneider Downs, demonstrated that payments were, in fact, applied to the Plaza debt for the lock box account.

43. Denied. WRS' records kept in the ordinary and regular course of WRS' business, as reviewed by Schneider Downs, established that the amount is accurate.

44. Admitted in part. Denied in part. WRS admits that the principal amount of the Plaza debt was $685,379.98 as of August 31, 1998. However, with accrued finance charges the balance was the sum of $720,679.15.

45. Denied. First, to the extent that Parkinson is contesting the accuracy of an invoice, the terms and conditions required Plaza to make a written objection within 30 days. Absent evidence of such a written objection, the content of the invoice became an account stated limiting Plaza's ability to contest it. Furthermore, the statement is specifically denied because the invoices were not previously challenged. Furthermore, Parkinson has no evidentiary basis other than opinion to make the statement. To the best of WRS counsel's information all invoices were billed at the proper rates. The discounted rates in the Services Agreement did not apply because Plaza never was current on its payments.

46. Admitted in part. Denied in part. WRS admits that the Services Agreement contemplated that payment of the receivable would result in payment of the WRS debt. The same premise would be true without the Service Agreement. However, the other premise was that the customers who owe the receivables would pay them in the amounts alleged when in fact most did not pay and disputed the amounts and sought credits for return of unsold items, damaged items, and other advertising credits that

Parkinson had extended as exemplified by the by the returns of Giant of Thunder Mountain.

47. Denied. Parkinson accurately describes what would have occurred had its customers simply paid the invoices. But as the result of credits extended by Parkinson to his customers and credits for returns, the amounts owed to Plaza were not paid as readily or in the amounts anticipated by WRS.

48. Admitted in part. Denied in part. WRS admits that is stored a significant amount of inventory. WRS did not foreclose its security interest in the inventory prior to commencing its suit. In particular, WRS could not, as recognized by Parkinson in Exhibit "1", sell the product without infringing upon rights holder copyrights. For example, Herklotz, through counsel, notified WRS not to sell the inventory of Giant of Thunder Mountain videocassette , Exhibit "25". In an effort to safely foreclose its interest in the inventory and to exploit the content for application to the Plaza debt, WRS asked for declaratory relief and judicial foreclosure of its interest. WRS however abandoned these claims when the case was reopened.

49. Admitted. WRS could not without infringing the rights holders, copyright sell the inventory as stated above. Thus, WRS did not and could not sell the inventory, nor to the best of its knowledge, did Plaza ever try to obtain possession of the inventory, which WRS presumed Plaza considered to be outmoded media.

50. Denied. This is a summary of what was previously stated which WRS has denied before. WRS denies the statement and incorporates Paragraphs 1 through 49 set forth above.

51. Denied. First, Baker and Taylor Video sought significant credit from Plaza and refused to pay until proper credits were provided.. Secondly, WRS in its records receipt of payment into the lock box and application to Plaza and distribution thereof. Parkinson's own Memorandum acknowledges the payment was received and disbursed.

52. Denied. Plaza continued to attempt to make payment to WRS and acknowledged the large debt. Parkinson recognized the debt exceeded $1,000,000 in June of 2000. See Exhibit "27" letter to WRS June 8, 2000.

53. Denied. To the extent that Plaza contends that it has any claims against WRS, said claims have been discharged by confirmation of the Plan of Reorganization in WRS' Chapter 11 bankruptcy, Case No. 01-28759-MBM

54. Denied. WRS denies the averment as stated. WRS faithfully satisfied its obligations to Plaza by providing the services under the Services Agreement, but did not receive payment from Plaza as anticipated

55. Denied. WRS submits that Parkinson's Memoranda confirm Parkinson's knowledge of collection and disbursements from the lock box and WRS records as reviewed by Schneider Downs show that WRS records are a reasonably accurate statement of the amount of the debt.

56. No response required.

Respectfully submitted,

THOMAS E. REILLY, P.C.

BY: ____/s/ Thomas E. Reilly______

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CERTIFICATE OF SERVICE

I, Thomas E. Reilly, Esquire, hereby certify that a true and correct copy of WRS' Response to Affidavit of Eric Parkinson was delivered via first-class mail, postage pre-paid on the 2nd day of November, 2007, to the following:

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THOMAS E. REILLY, P.C.

BY: /s/ Thomas E. Reilly
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